IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DARRYL PATTERSON JR., a minor by his natural guardian, KIM SMITH, et al.	:	CIVIL ACTION
Plaintiffs,	:	NO.99-CV-4792
v.	:	
SCHOOL DISTRICT OF PHILADELPHIA, et al., Defendants.	:	
Clarence C. Newcomer, S.J.		July 2000

M E M O R A N D U M

Presently before the Court are defendants' Motions for Summary Judgment and plaintiff's opposition thereto. For the reasons that follow, said Motions will be granted.

I. Facts

On September 24, 1997, Corey Floyd, a student at Lamberton School, was brutally attacked by an unidentified number of students. Corey Floyd, (hereafter "Floyd") accompanied by his mother, Ms. Cobb, then went to the 18th Police District, to file a criminal complaint regarding an assault upon Floyd. While at the 18th Police District, Mr. Floyd and his mother were presented to the Juvenile Aid Officer, Michelle Haines. Upon seeing the condition of Floyd and being aware that Floyd had been recently hospitalized for the assault, Officer Haines re-scheduled an interview with the victim for October, 1, 1997.

On October 1, 1997, Floyd returned to the 18th Police District, specifically the Southwest Detective Division, and was interviewed by Officer Haines. During this interview, Floyd provided a signed statement detailing the events of the assault upon him and naming those students who participated in the attack. Floyd explained in his statement that he and his mother returned to the school, the day after the assault, to identify those who participated in the attack.

Approximately three weeks later, Officer Haines contacted the School Security Officer, John Hall, (hereafter "Hall"), and confirmed that there had been an assault and that the names provided to her by Floyd were students that Floyd previously identified.

Based on Floyd's statement, Officer Haines submitted an affidavit of probable cause accompanied by supporting documents such as Floyd's statement and arrest report for each named student, alleging aggravated assault and conspiracy to commit aggravated assault, to the District Attorney's Office Charging Unit. Shortly thereafter, Officer Haines received approval of the charges from two separate Assistant District Attorneys. As a result, Officer Haines then made arrangements with Lamberton school officials to arrest the named students.

On October 21, 1997, Officer Haines arrested all named students, except Rafeek Foman, at the Lamberton school. School officials went to each of the named students' classrooms and

requested that the students proceed to the disciplinarian office. Upon arrival to the office, the students were then arrested by Officer Haines and transported to the 18th Police District. Several hours later the students were released to the custody of their parents. Since Rafeek Foman transferred to another school, based on the affidavit of probable cause and supporting documents, Officer Haines obtained a warrant for Foman's arrest. Subsequently, Foman surrendered to police.

In September 1999, plaintiffs filed their complaint with this Court against defendants Police Officer Michelle Haines, Commissioner Richard Neal, the City of Philadelphia, the Philadelphia School District, and several School District employees. Plaintiffs raised in their complaint the following causes of action: (1) unreasonable search and seizure; (2) denial of equal protection; (3) failure to train and supervise; (4) negligence; (5) assault; (6) intentional infliction of emotional distress; (7) negligent infliction of emotional distress; (8) false imprisonment; (9) false arrest and (10) malicious prosecution.

Presently before the Court are defendants' motions for summary judgment. Defendants Michelle Haines, Richard Neal, and the City of Philadelphia (hereafter "City defendants") argue that summary judgment should be entered in their favor on all counts of plaintiff's complaint because: (1) no evidence exists to

establish a valid claim for municipal liability under 42 U.S.C. § 1983; (2) lack of evidence to establish a valid claim for municipal liability for failure to train defendant officers; (3) no legal basis exists to support plaintiff's claim for municipal liability under a theory of Respondeat Superior; (4) no legal basis to support state claims; (5) no legal basis to support claim for false arrest as a constitutional violation; (6) Officer Haines is immune from liability under the doctrine of qualified immunity; (7) plaintiffs cannot satisfy the burdens of Franks v. Delaware in their challenge to Officer Haines affidavit of probable cause; (8) plaintiffs cannot meet the burdens to establish liability against Richard Neal; (9) plaintiffs cannot meet the burdens to establish violations of the equal protection clause of the Fourteenth Amendment.

Defendants School District of Philadelphia, David W. Hornbeck, Dr. Warren Pross and John Hall also move this Court to grant summary judgment in their favor on all counts of plaintiff's complaint because: (1) no legal basis exists to support plaintiff's claims against Superintendent Hornbeck, Pross, Hall and the School District of Philadelphia under a theory of Respondeat Superior. Plaintiff has filed a response to each Motion for Summary Judgment. For the following reasons, the Court grants both motions.

II. Summary Judgment Standard

A reviewing court may enter summary judgment where there are no genuine issues as to any material fact and one party is entitled to judgment as a matter of law. White v. Westinghouse Electric Co., 862 F.2d 56, 59 (3d Cir. 1988). "The inquiry is whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). The evidence presented must be viewed in the light most favorable to the non-moving party. Id. at 59.

The moving party has the initial burden of identifying evidence which it believes shows an absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Childers v. Joseph, 842 F.2d 689, 694 (3d Cir. 1988). The moving party's burden may be discharged by demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex, 477 U.S. at 325. Once the moving party satisfies its burden, the burden shifts to the non-moving party, who must go beyond its pleading and designate specific facts by use of affidavits, depositions, admissions, or answers to interrogatories showing there is a genuine issue for trial. Id. at 324. Moreover, when the non-moving party bears the burden of proof, it must "make a showing sufficient to establish the existence of [every] element essential to that party's case."

Equimark Commercial Fin. Co. v. C.I.T. Fin. Servs. Corp., 812 F.2d 141, 144 (3d Cir. 1987) (quoting Celotex, 477 U.S. at 322).

Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." White, 862 F.2d at 59 (quoting Celotex, 477 U.S. at 322). The non-movant must specifically identify evidence of record, as opposed to general averments, which supports his claim and upon which a reasonable jury could base a verdict in his favor. Celotex, 477 U.S. at 322. The non-movant cannot avoid summary judgment by substituting "conclusory allegations of the complaint . . . with conclusory allegations of an affidavit." Lujan v. National Wildlife Found., 497 U.S. 871, 888 (1990). Rather, the motion must be denied only when "facts specifically averred by [the non-movant] contradict "facts specifically averred by the movant." Id. Applying these principles to the facts here, the Court finds that defendants are entitled to judgment as a matter of law.

III. CITY DEFENDANTS

A. No Record Evidence Exists to Establish a Valid Claim for Municipal Liability Under 42 U.S.C. § 1983.

Plaintiffs allege that City defendants failed to train or adequately supervise their employees to ensure that the constitutional rights of plaintiffs were not violated by the actions of their employees.

Under 42 U.S.C. § 1983 the City of Philadelphia can only be held liable if plaintiff proves that city employees were executing: (1) an officially adopted policy declared by City Officials; or (2) that while not acting pursuant to an official policy, the officers were acting under an officially adopted custom of the City of Philadelphia. See Monell v. New York City Dept. of Social Services, 436 U.S. 658, 98 S.Ct. 2018 (1978). Therefore, the City of Philadelphia cannot be held liable under Section 1983 for an injury unless the plaintiff proves that the performance of an official policy or custom resulted in plaintiff's injury. See Monell, 436 U.S. 658; See Simmons v. City of Philadelphia, 947 F.2d 1042 (3d Cir. 1991), cert denied 503 U.S. 985, 112 S.Ct. 1671, 118 L.Ed. 2d. 391 (1992).

The officials who can impose liability on a municipality are those "whose edicts or acts may fairly be said to represent official policy." Monell, 436 U.S. at 694. The question of who has final policy-making authority for a municipality is a question of state law, to be decided by the judge by referring to state and local law, as well as custom that has the force of law. Jett v. Dallas Independent School District, 491 U.S. 701, 109 S.Ct. 2702 (1989). However, a single incident by a lower level employee acting under the color of law does not establish either an official policy or custom. See City of Oklahoma v. Tuttle, 471 U.S. 808, 105 S.Ct. 2427 (1985).

Plaintiff has not provided any evidence that the City defendants were executing an official policy or custom that injured plaintiffs. Counsel for plaintiff did not explicitly point to a specific practice or custom that is unconstitutional or in some way injured the plaintiffs. Plaintiff has failed to produce specific evidence to support a claim that the City has a custom, policy or practice that encourages and causes constitutional violations by police officers, including the defendants. Nor does counsel have any evidence that a particular custom or policy of the City caused the violation of plaintiff's constitutional rights. In light of the above, plaintiff's cause of action against the City of Philadelphia will be dismissed.

B. No Record Evidence Exists to Establish a Valid Claim for Municipal Liability Under 42 U.S.C. § 1983 for Failure to Train the Defendant Officer.

In order to establish liability under section 1983 based on an alleged policy of inadequate training and supervision plaintiff must satisfy the following prongs: (1) prove that the training and/or supervision by the Philadelphia Police Department was inadequate; and (2) identify with specificity a responsible policy-maker who knew that said training and supervision was inadequate; and (3) prove that the official knew that said inadequate policies were resulting in the deprivation of the constitutional rights; and (4) prove that the identified policy-maker made a conscious choice or was deliberately indifferent to

the inadequate procedures and did nothing to correct them; and (5) establish an affirmative link between the alleged policies and the cause of the plaintiff's alleged violation of rights. See Tuttle, 471 U.S. at 808; See City of Canton, 489 U.S. 378, 109 S.Ct. 1197 (1989).

Inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to "deliberate indifference" to the rights of persons with whom the police comes in contact. City of Canton, 489 U.S. at 378. This "deliberate indifference" standard is not met by merely alleging that the existing training program for a group of employees is a municipal policy for which the City is responsible. See Id. Nor is it sufficient to show that a particular officer has been unsatisfactorily trained. An officer's shortcomings may have resulted from factors other than a poor training program. It is also insufficient to say that an injury or accident occurred due to lack of training. See Id.

In order to satisfy the standard, plaintiffs must provide evidence of a conscious decision or deliberate indifference of a high level official determined by the Court, to have final policy making authority. In this instance, plaintiffs have not provided evidence against the City of Philadelphia for failure to adequately train, direct or supervise. Plaintiffs do not address specific behavior or acts on the part of officers that could

injure plaintiffs. Most importantly, plaintiffs do not clearly explain how the behavior of the City defendants is a result of poor training and how policy-makers are indifferent to the proper training of Philadelphia police officers.

C. No Legal Basis Exists to Support the Plaintiff's Claim for Municipal Liability under Respondeat Superior.

Plaintiffs allege that the City of Philadelphia should be held responsible for the alleged torts of their employees. However, a municipality cannot be sued under 42 U.S.C. § 1983 on a theory of respondeat superior for the alleged constitutional torts of their employees. See Monell v. Dept. of Social Services of the City of New York, 436 U.S. 658 (1978). If the City of Philadelphia cannot be held liable under § 1983, plaintiff can prevail against the City only in those limited instances permitted by the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8541. Section 8542 of the act provides eight exceptions to the rule: (1) operation of motor vehicles, (2)care, custody, and control of personal property; (3) care, custody and control of real property; (4) dangerous conditions of trees, traffic controls & street lighting (5) dangerous conditions of utility service facilities; (6) dangerous conditions of streets (7) dangerous conditions of sidewalks; and (8) care, custody and control of animals. 42 Pa. C.S. § 8542(b)(1-8).

In addition, the Act provides that the City of Philadelphia may not be held liable for injuries and/or damages caused by acts

of an employee which constitute "a crime, actual fraud, actual malice, or willful misconduct." 42 Pa. C.S. § 8550. In a situation that such activity has taken place, only a city employee and the City itself may be held liable. See City of Philadelphia v. Glim, 613 A.2d 613 (Pa. 1992). Since plaintiff's claims do not fall within any of the above exceptions, the City is immune from plaintiff's tort claims.

D. No Legal Basis Exists to Support the Plaintiff's State Claims.

Plaintiffs allege that the actions of defendants were malicious in that they furnished false information and concealed facts that if known by the prosecutor charges would not have been brought against plaintiffs. Plaintiffs cannot satisfy their burden as to the elements of a claim for malicious prosecution. To prove a claim for malicious prosecution, plaintiffs must establish the following: (1) the defendants initiated a criminal proceeding; (2) the proceeding ended in plaintiffs favor, (3) the defendants initiated the proceeding without probable cause to arrest and, (4) the defendants acted with actual malicious purpose.

Officer Haines did not initiate the criminal proceeding. The proceeding was initiated by the victim Corey Floyd and his mother. Officer Haines did have probable cause for the arrest because Floyd named his attackers in the police report. Floyd

did not express any doubt in his report as to the identification of the perpetrators of the attack. In addition, two assistant district attorneys approved the arrests of all plaintiffs. Finally, there is no evidence that Officer Haines acted with malicious purpose. In fact, Officer Haines asserts, in her deposition, that she would frequently check on the plaintiffs while they were being held at the 18th district, to ensure they were comfortable and safe. In particular, Officer Haines expressed her concern with one plaintiff who suffered from asthma. There has been no evidence submitted to suggest that Office Haines behavior before, during and after the arrests was maliciously motivated.

In order to state a claim for the tort of intentional infliction of emotional distress, plaintiffs must allege conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." Cox v. Keystone Carbon Co, 861 F.2d 390, 395 (3d. Cir. 1988)(citing Buczek v. First Nat'l Bank of Mifflintown, 366 Pa.Super. 551, at 558, 531 A.2d 1122, at 1125 (1987)). Plaintiffs must also allege "physical injury, harm, or illness caused by defendant's conduct." Corbett v. Morgenstern, 934 F. Supp. 680, 684 (E.D. Pa. 1996). Only the most egregious conduct will be a sufficient basis for the tort of intentional infliction of emotional

distress. Hoy v. Anglone, 720 A.2d 745, 754 (PA 1998).

In this instance, the conduct of the police officers simply does not rise to such an egregious level as a matter of law to satisfy a tort claim of intentional infliction of emotional distress. Plaintiffs did not provide evidence of any physical injury, harm or illness suffered by the plaintiffs. Nor did the plaintiffs allege any outrageous conduct of City defendants. The fact that Officer Haines interviewed a victim of a crime and arrested those who the victim identified as the perpetrators does not amount to outrageous conduct.

E. No Legal Basis Exists to Support the Plaintiff's Claim for False Arrest as a Constitutional Violation.

The Fourth Amendment of the Constitution of the United States provides that "[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched an the person or things to be seized." U.S Const. Amend. IV.

The Fourteenth Amendment of the Constitution of the United States provides that: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive a person of life, liberty, or property, without due process of law. . ." U.S. Const. Amend. XIV.

Probable cause is more than a mere suspicion of criminal

activity, it does not require the arresting officer to possess sufficient evidence to establish guilt beyond a reasonable doubt. See Orsatti v. New Jersey State Police, 71 F.3d 480, 482. In cases considering whether the arresting officer possessed probable cause to arrest, the proper inquiry is "whether the arresting officer had probable cause to believe the person arrested had committed the offense"; it is "not whether the person arrested in fact committed the offense." Groman v. Township of Manalapan, 47 F.3d 628, 634 (3d Cir. 1995). The Constitution does not guarantee that only the guilty will be arrested, therefore, whether the plaintiffs were prosecuted or not has no relevance in determining the validity of the arrest. Baker v. McCollan, 443 U.S. 137, 145, 99 S.Ct. 2689, 61 L.Ed. 2d 433 (1979).

A court could reasonably conclude that Officer Haines had probable cause to arrest the plaintiff based on several factors. First, the victim identified the plaintiffs in his police report. Second, Officer Haines observed Floyd's injuries as a result of the assault and Officer Haines received approval of the charges against the plaintiffs from the District Attorney. Once a police officer has discovered sufficient facts to establish probable cause, the officer has no constitutional duty to further investigate in hopes of finding exculpatory evidence. Once Officer Haines possessed the probable cause to arrest plaintiffs, she had no obligation to further investigate the matter. See Baker v. McCollam, 443 U.S. 137, 99 S.Ct. 2689 (1979).

In this instance, it is clear that Officer Haines arrested plaintiffs with probable cause. The victim of the assault identified the plaintiffs without hesitation in the police report. Hence, Officer Haines is entitled to immunity. The Third Circuit has analogized claims of probable cause with claims for malicious prosecution. Therefore, claims of arrest without probable cause must satisfy the elements of a claim for malicious prosecution. Lee v. Mihalich, 847 F.2d 66 (3d Cir. 1988). As demonstrated earlier in this decision, plaintiffs cannot satisfy the elements for malicious prosecution against City defendants. Hence, they cannot satisfy the elements of a claim of arrest without probable cause.

F. Officer Haines is Immune from Liability under the Doctrine of Qualified Immunity.

If an officer's "conduct does not violate clear established statutory or constitutional rights of which a reasonable person would have known, under the doctrine of qualified immunity, an arresting officer is protected from liability under 42 U.S.C. 1983. See Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d. 396 (1982). The Supreme Court has held that under qualified immunity "even law enforcement officials who 'reasonably but mistakenly conclude that probable cause is present' are entitled to immunity." Hunter v. Bryant, 502 U.S. 224, 227, 112 S.Ct. 534 (1991).

Qualified immunity protects governmental officials from the burdens of civil trial. "Only when an official's conduct

violates 'clearly established statutory or constitutional rights of which a reasonable person would have known' is the official not protected by qualified immunity." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

When a defendant asserts a qualified immunity defense in a motion for summary judgment, the plaintiff must first show that the defendant's alleged conduct violated a clearly established federal statutory or constitutional right. If this burden is met, then defendant must show that no genuine issue of material fact exists as to the "objective reasonableness" of defendant's belief in the lawfulness of her actions. See In re City of Philadelphia Litigation, 49 F.3d 945 (3d Cir. 1995). An arresting officer may be liable only if "on an objective basis, it is obvious that no reasonably competent officer would have concluded that" probable cause existed. Mallery v. Briggs, 475 U.S. 335, 341, 106 S.Ct. 1092, 89 L.Ed. 2d 271 (1986).

Officer Haines, in this instance, behaved reasonably and lawfully in her actions. There was probable cause for the arrests of the plaintiffs. According to Officer Haines' depositions, she arrested students in a disciplinary office and not in a classroom before plaintiffs peers and professors. Officer Haines attempted to contact all parents within an hour of the arrest. Officer Haines frequently checked on the plaintiffs in the 18th district holding cell to ensure their safety, comfort and well-being. Clearly, Officer Haines behavior was reasonable. Therefore, Officer Haines is entitled to immunity.

G. Plaintiffs Cannot Meet the Burdens of Franks v. Delaware in their Challenge to Officer Haines Affidavit of Probable Cause.

The standard to apply when challenging the validity of an affidavit of probable cause is established in Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674 (1978). Under Franks a plaintiff must prove, by a preponderance of the evidence, that the Officer knowingly and deliberately, or with a reckless disregard for the truth, made false statements or omissions that create a falsehood in applying for the warrant; that such statements or omissions are material, or necessary, to a finding of probable cause. See Franks v. Delaware, 438 U.S. at 155.

Pursuant to the Franks analysis, if a judicial officer could conclude that the defendant's affidavit is sufficient to establish probable cause, the defendant is entitled to summary judgment. Two Assistant District Attorneys, reasonable judicial officers, concluded that Officer Haines' affidavit of probable cause was sufficient to establish probable cause to arrest.

The Franks analysis has been explained by the Third Circuit in Sherwood v. Mulvihill, 113 F.3d 396 (3d Cir. 1997). Under 42 U.S.C. 1983 "a plaintiff must prove, by a preponderance of the evidence, (1) that the affiant knowingly and deliberately, or with a reckless disregard for the truth, made false statements or omissions that create a falsehood in applying for a warrant; and (2) that such statements or omissions are material, or necessary to the finding of probable cause." Sherwood, 113 F.3d at 399.

Plaintiffs have not submitted evidence that Officer Haines

acted with knowledge that the statements made to her by Floyd, the victim of the assault, were false or that any statements made by Officer Haines in her affidavits of probable cause were made with knowledge that the statements were false. Plaintiffs have not shown that Officer Haines entertained serious doubts as to the truth of Floyd's statements or was highly aware of its falsity. The challenges made against Officer Haines affidavits of probable cause have not satisfied the standard outlined in Franks.

Since the claims against former Police Commissioner Richard Neal hinged upon the claims against Officer Haines it can be concluded that as a matter of law Richard Neal is also entitled to summary judgment.

In viewing the evidence in the light most favorable to the non-moving parties, all City defendants are entitled to summary judgment as a matter of law.

IV. School District Defendants

Plaintiffs allege that defendants consented to have plaintiffs arrested and assisted police officers in the arrest by providing their names and addresses to police, which is a violation of federal law.

Under Pennsylvania law, police officers are cloaked with authority for their actions. It would have been a criminal violation for any person to physically interfere with the police action. See 18 Pa.C.S.A. §§5101.5104,5105 and 2701. Even where the police action is later determined to be unlawful, a third

party is not excused from the consequence of physical interference. Commonwealth v. Supertzi, 235 Pa. Super. Ct. 95, 340 A.2d 574 (1975).

In addition, when a matter is taken over by law enforcement, the School District and its employees "cannot be liable for any constitutional violation that followed." Jennings v. Joshua Ind. School District, 869 F.2d 870 (5th Cir. 1989).

The School District defendants were not in a position to keep police officers from arresting plaintiffs. In fact, to interfere with the arrests would have been a criminal violation.

Plaintiffs also allege that the School District defendants unlawfully released information regarding defendants. Under FERPA, 20 U.S.C.A. § 2132g general information referred to as "directory information" can be disseminated without consent of students and parents. Therefore, providing the police with the plaintiffs' names and addresses did not require parental consent and was not a violation of federal law.

In light of the above it is not necessary to address issues of Respondeat Superior or tort claims as this Court has found the actions of City defendants and School District defendants lawful.

The defendants have proven that they all behaved reasonably and within the confines of the law. Since plaintiffs do not clearly point to acts made by Officer Haines and how they violated plaintiffs' rights, this Court is not persuaded that material facts are in dispute. The evidence does not demonstrate a disagreement that would require submission to a jury. There is

no dispute that Floyd was assaulted and identified plaintiffs as the perpetrators of his assault. Floyds police report does not show that he conveyed any doubt to Officer Haines as to the identity of those who attacked him. Therefore, Officer Haines acted reasonably when she proceeded to seek permission from the District Attorneys Office for their arrest. The non-moving parties have not satisfied their burden of showing the existence of a genuine issue for trial. In viewing the evidence in the light most favorable to the non-moving parties, the defendants are entitled to summary judgment as a matter of law.

V. Conclusion

Accordingly, for the foregoing reasons, the Court will grant defendants' Motions for Summary Judgment.

AN APPROPRIATE ORDER FOLLOWS.

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Clarence C. Newcomer, S.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DARRYL PATTERSON JR., a minor, by his natural guardian, KIM SMITH, et al.,	:	CIVIL ACTION
Plaintiffs	:	
v.	:	
SCHOOL DISTRICT OF PHILADELPHIA, et al.,	:	
Defendants	:	NO. 99-4792

O R D E R

AND NOW, this day of July, 2000, upon consideration of Defendants' Motions for Summary Judgment, and plaintiffs' response thereto, it is hereby ORDERED that said Motions are GRANTED. IT IS FURTHER ORDERED that JUDGMENT is ENTERED in favor of all defendants, and AGAINST all plaintiffs.

AND IT IS SO ORDERED.

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Clarence C. Newcomer, S.J.